

1 BILL NO. Z-87-02-27

2 ZONING MAP ORDINANCE NO. Z-10-87

3 AN ORDINANCE amending the City of
4 Fort Wayne Zoning Map No. N-14.

5 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
6 FORT WAYNE, INDIANA:

7 SECTION 1. That the area described as follows is
8 hereby designated a B-3-B (General Business) District under
9 the terms of Chapter 33 of the Code of the City of Fort
10 Wayne, Indiana of 1974:

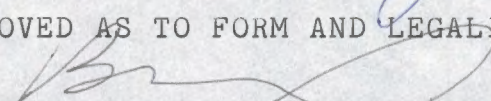
11 Lots 8, 10, 12, 14, 16 and 18 of John M. E. Riedel's
12 Addition to the City of Fort Wayne together with any
13 adjacent vacated streets and alleys.

14
15 and the symbols of the City of Fort Wayne Zoning Map No. N-
16 14, as established by Section 11 of Chapter 33 of the Code
17 of the City of Fort Wayne, Indiana are hereby changed
18 accordingly.

19 SECTION 2. That this Ordinance shall be in full force
20 and effect from and after its passage and approval by the
21 Mayor.

22
23 
24 COUNCILMEMBER

25 APPROVED AS TO FORM AND LEGALITY:

26 
27 BRUCE O. BOXBERGER, CITY ATTORNEY
28
29
30
31
32

Read the first time in full and on motion by Bradbury
seconded by Redd, and duly adopted, read the second ti
by title and referred to the Committee Regulations (and the C
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wa
Indiana, on _____, the _____ day of _____,
19_____, at _____ o'clock _____ .M.,

DATE: 2-24-87

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Bradbury
seconded by Stier, and duly adopted, placed on it
passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>8</u>	_____	_____	<u>1</u>	_____
<u>BRADBURY</u>	<u>1</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>2</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>4</u>	_____	_____	_____	_____
<u>GiaQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>HENRY</u>	_____	_____	_____	<u>1</u>	_____
<u>REDD</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 5-26-87

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort
Wayne, Indiana, as (~~ANNEXATION~~) (~~APPROPRIATION~~) (~~GENERAL~~)
(~~SPECIAL~~) (ZONING MAP) ORDINANCE (RESOLUTION) NO. 3-10-87
on the 26th day of May, 19 87

ATTEST:

Sandra E. Kennedy

SANDRA E. KENNEDY, CITY CLERK

(SEAL)

Mark E. GiaQuinta

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana,
on the 27th day of May, 19 87
at the hour of 11:00 o'clock 11 .M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 29th day of May
19 87, at the hour of 1:00 o'clock P .M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR., MAYOR

RECEIPT

No 1170

COMMUNITY DEVELOPMENT & PLANNING

FT. WAYNE, IND., 1/30 1981

RECEIVED FROM

Bellway Chevrolet

\$

50.00

THE SUM OF

Fifty

100

DOLLARS

ON ACCOUNT OF

Reason3101, 3105, 3113, 3111, 3119, 3123 Pleasant AveRomy

AUTHORIZED SIGNATURE

RECEIPT NO. _____

THIS IS TO BE FILED IN DUPLICATE

DATE FILED _____

INTENDED USE auto dealership

I/We JAMES E. KELLEY

(Applicant's Name or Names)

do hereby petition your Honorable Body to amend the Zoning Map of Fort Wayne Indiana, by reclassifying from a/an R2 District to a/an B 3 B District the property described as follows:

Lots 8, 10, 12, 14, 16, and 18 of John M.E. Riedel's Addition to the City of Fort Wayne together with any adjacent vacated streets and alleys.

(Legal Description) If additional space is needed, use reverse side.

ADDRESS OF PROPERTY IS TO BE INCLUDED:

2101, 2105, 2111, 2113, 2119, and 2123 Pleasant Avenue, Fort Wayne, Indiana

(General Description for Planning Staff Use Only)

I/We, the undersigned, certify that I am/We are the owner(s) of fifty-one percentum (51%) or more of the property described in this petition.

James E. Kelley

500 E. State Street

P.O: Box 5015
Fort Wayne, IN 46857

James E. Kelley
James E. Kelley

(Name)

(Address)

(Signature)

(If additional space is needed, use reverse side.)

Legal Description checked by _____ (OFFICE USE ONLY)

NOTE FOLLOWING RULES

All requests for deferrals, continuances, withdrawals, or request that the ordinance be taken under advisement shall be filed in writing and be submitted to the City Plan Commission prior to the legal notice pertaining to the ordinance being sent to the newspaper for legal publication. If the request for deferral, continuance or request that ordinances be taken under advisement is received prior to the publication of the legal ad being published the head of the Plan Commission staff shall not put the matter on the agenda for the meeting at which it was to be considered. The Plan Commission staff will not accept request from petitioners for deferrals, continuances, withdrawals, or requests that an ordinance be taken under advisement, after the legal notice of said ordinance is forwarded to the newspaper for legal publication but shall schedule the matter for hearing before the City Plan Commission. (FILING FEE \$50.00)

Name and address of the preparer, attorney or agent.

VINCENT J. HEINY

2000 Fort Wayne Bank Building
Fort Wayne, IN 46802

(219) 424-2000

(Name)

(Address & Zip Code)

(Telephone Number)

COMMUNITY DEVELOPMENT AND PLANNING / Division of Long Range Planning & Zoning and (CITY PLAN COMMISSION) / Room #830, City-County Building, One Main Street, Fort Wayne, IN 46802 (PHONE: 219/ 427-1140).

Applicants, Property owners and preparer shall be notified of the Public Hearing approximately ten (10) days prior to the meeting.

Legal Description of property to be rezoned.

Lots 8, 10, 12, 14, 16, and 18 of John M.E. Riedel's Addition to the City of
Fort Wayne together with any adjacent vacated streets and alleys

Owners of Property

James E. Kelley	500 E. State Street	484-5566
	P.O. Box 5015	
	Fort Wayne, IN 46857	
(Name)	(Address)	(Signature)

NOTE: All checks are to be made payable to: CITY OF FORT WAYNE
This form is to be filed in duplicate.

NOTICE:
FILING OF THIS APPLICATION GRANTS THE CITY OF FORT WAYNE PERMISSION TO POST
"OFFICIAL NOTICE" ON THE PETITIONED PROPERTY.

FAILURE TO POST, OR TO MAINTAIN POSTING CAN PREVENT THE PUBLIC HEARING
FROM BEING HELD.

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on February 24, 1987 referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated as Bill No. Z-87-02-27; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on February 23, 1987.

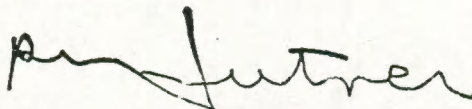
NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this ordinance be returned to the Common Council with a DO PASS recommendation based on the Commission's following "Findings of Fact":

- (1) the grant will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) the use or value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner;
- (3) the need for the rezoning arises from some condition peculiar to the property involved and the condition is not due to the general conditions of the neighborhood;
- (4) the strict application of the terms of the zoning ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the rezoning is sought; and,
- (5) the grant does not interfere substantially with the comprehensive plan adopted under the 500 series of the metropolitan development law.

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held March 2, 1987.

Certified and signed this
8th day of May 1987.



Robert Hutner
Secretary

ORIGINAL

Admn. Appr. _____

COUNCILMANIC DISTRICT No. _____

DIGEST SHEET

ORIGINAL

TITLE OF ORDINANCE Zoning Ordinance Amendment

DEPARTMENT REQUESTING ORDINANCE Land Use Management - CD&P

3-87-02-27

SYNOPSIS OF ORDINANCE 2101, 2105, 2111, 2113, 2115, 2119 and 2123 Pleasant Avenue

EFFECT OF PASSAGE Property is presently zoned R-2 - Two-Family Residential.

Property will become B-3-B - General Business.

EFFECT OF NON-PASSAGE Property will remain R-2 - Two Family Residential.

MONEY INVOLVED (Direct Costs, Expenditures, Savings) _____

(ASSIGN TO COMMITTEE (J.N.) _____)

Division of Community Development & Planning

BILL NUMBER

BRIEF TITLE

Zoning Ordinance Amendment

APPROVAL DEADLINE

REASON

From R-2 to B-3-B

DETAILS

Specific Location and/or Address

2101, 2105, 2111, 2113, 2119 & 2123
Pleasant Avenue

Reason for Project

To enlarge the dealership parking
for Kelley Chevrolet and for possible
future expansion of an existing body shop.

Discussion (Including relationship to other Council actions)

23 February 1987 - Public Hearing

Minutes from Public Hearing are Attached

2 March 1987 - Business Meeting

Motion was made to return the ordinance
to the Common Council with a DO PASS
recommendation subject to the following
conditions:

- 1) No additional access should be granted
from Pleasant Avenue or Forest Avenue.
- 2) A 6 foot high screen to buffer the
site from the residential districts must
be approved by the CD&P Landscape Architect.
Such approved screen must be maintained to
the satisfaction of the department. This
screen should extend from the alley south
of State, to Forest Avenue on Pleasant
Avenue, and on Forest Avenue from Pleasant
Avenue to the first alley west.
- 3) To insure that these concerns are
satisfied, the petitioner should enter into

POSITIONS

RECOMMENDATIONS

Sponsor

City Plan Commission

Area Affected

City Wide

Other Areas

Applicants/ Proponents

Applicant(s)

James Kelley
City Department

Other

Opponents

Groups or Individuals

Northside Neighborhood Assn
Jean Cussen

Basis of Opposition

- traffic generated onto
residential street
- noise & lights from lot

Staff Recommendation

☒ For ☐ Against

Reason Against

Board or Commission Recommendation

By

☒ For ☐ Against

☐ No Action Taken

☐ For with revisions to condition
(See Details column for condition)

CITY COUNCIL ACTIONS (For Council use only)

☐ Pass ☐ Other

☐ Pass (as
amended) ☐ Hold

☐ Council Sub. ☐ Do not pass

DETAILS

a restrictive covenant with the residential property owners agreeing to those conditions and providing for relief from violations. Such covenants should be submitted to City Plan for review and approval.

Motion Carried.

Of the 8 members present 7 voted in favor of the motion one (1) did not vote.

NOTE: The restrictive covenant has been submitted and approved by the Plan Commission attorney. A copy is on file in the Plan Commission Office and a copy is attached to the minutes for your information.

POLICY/PROGRAM IMPACT

Policy or
Program
Change

☐

No

☐

Yes

Operational
Impact
Assessment

(This space for further discussion)

Project Start

Date 20 January 1987

Projected Completion or Occupancy

Date 8 May 1987

Fact Sheet Prepared by

Patricia Biancaniello

Date 8 May 1987

Reviewed by

Gary Burt

Reference or Case Number

Date

5/11/87

Vincent Heiny, attorney represented the following case.

- a. **Change of Zone #252**
 From R-2 to B-3-B
 2101, 2105, 2111, 2113, 2119, & 2123 Pleasant Avenue.

He stated that with regard to vacate the alleys as well as vacating Riedel Place. He stated that Mr. Kelley recently acquired all of the property along the north/south alley; on the east/west alley the south side is owned by Mr. Kelley the north side is owned by MBC Corp, and Mr. Kelley presently leases that property from MBC Corp. He stated that MBC Corp has also joined in the petition to vacate the two alleys. He stated that Riedel Place has never been opened. He stated that they thought that Riedel Place was vacated through the Board of Works but were unable to verify that fact. He stated that none of the requested vacated right-of-way has any use to the city in his opinion. He stated that they have no objections to providing utility easements as needed. He stated that with regard to the rezoning request it for the purpose of expanding the existing business, which is the Kelley Chevrolet dealership on West State. He stated that Mr. Kelley met with 15 of the property owners on Pleasant Avenue across the street from the proposed rezoning. He stated that they have indicated that they have no objection to the rezoning but that they would like a 6 foot high privacy fence along Pleasant Avenue all the way up to the first lot south of State Street. He stated that there is a curb cut at Riedel Place that they would like to keep. He stated that it is not used with any regularity. He stated that they have no objections to the staff's conditions.

John Shoaff questioned what they would use the rezoned property for.

Minutes
23 February 1987

Mr. Heiny stated that the present plan is for dealership parking. He stated they are also looking into the possibility of enlarging the body shop to the east.

Mr. Shoaff questioned if there would be any noxious fumes or noise from the body shop.

Mr. Heiny stated that it would be totally self-contained. He stated there would no fumes it is in an environmentally enclosed structure.

Baron Biedenweg questioned what type of lighting they would have on this property would it be just normal security lighting and not the high intensity lighting.

Mr. Heiny stated that was correct.

V. C. Seth stated he would like to make a correction in the staff on Page 18 of the agenda Condition #1 it should read as follows: "No additional access should be granted from Pleasant Avenue and Forest Avenue."

Edith Kenna questioned if Mr. Heiny had any problem with entering into a restrictive covenant with the Neighborhood Association.

Mr. Heiny stated they did not.

Ray Racine, with the Northside Neighborhood Association appeared before the Commission. Mr. Racine stated that they have met with Mr. Kelley and have agreed to go along with his request. He stated that there are a few things they would like set down in black & white. He stated they want the lot paved and Mr. Kelley agreed with that. He stated that the fence is to be a solid wood fence and as long as the 6 foot height covers any vehicles parked behind the fence they will agree with that. He stated that presently they have been parking RVs there and if they continue to do so that is too short a fence. He stated that the exit on Pleasant is agreeable to the neighbors if it is only used as an emergency exit and not as a general in and out cut.

Jean Cussen, 2114 Pleasant Avenue appeared before the Commission. Ms. Cussen stated that the assumption that the homeowners are in favor of this is not quite correct. She stated she felt they had agreed to it as a lesser of 2 evils. She stated they did not feel with Mr. Kelley's clout and finances they did not feel they could fight it. She stated they would much prefer to keep it as a residential zone. She stated they are not satisfied with a 6 foot fence, they do want it to be a wooden privacy fence, but 6 foot would not be sufficient to block their view. She stated

Minutes
23 February 1987

they are concerned with the lighting. They are also concerned with the loud speakers he uses on his lots for paging his employees.

Edith Kenna questioned that once this property was rezoned if there would be anyway to restrict the lighting on the property.

Wayne O'Brien stated that any new development in a commercial district has to go through a routing procedure and one of the departments is Street Light Engineering. He stated that their standard policy is that any security lighting or building lighting should be directed away from the view of surrounding residents and passing motorists, etc.

John Shoaff stated that he understood Mr. Racine to state that they would like the Riedel Place exit to be used for emergency use only. He questioned if this is what the petitioner had meant.

Mr. Heiny stated that he was not aware that they agreed to emergency use only but that it be limited to infrequent use, it would basically be the same amount of use that it is presently being used for.

Ray Racine stated that they use it very seldom and felt there would be no problem if they continued to use it the way they have been. Mr. Racine stated also that in speaking with Mr. Kelley he stated that there would be no lighting back there. He stated they have no objection to the minimal lighting and nothing else.

Bob Hutner stated that they indicated that there had been an agreement for a 6 foot high fence, if the motor homes that are already there are higher than this how do they intend to protect their view.

Mr. Racine stated that there was no consensus of opinion as to how high that fence should be, all they agreed upon was that there would be a wood fence. He stated that they are proposing if possible that the fence be of such a height to block a view of any vehicles parked on the lot.

Edith Kenna pointed out that anything over 7 foot would require a variance.

V. C. Seth stated that anything more than 6 foot high would not be appropriate what they would suggest in addition to a 6 foot high fence would be trees, so above the 6 foot would be covered by foliage.

Minutes
23 February 1987

Edith Kenna stated that it would be wise for the Neighborhood Association to discuss their restrictive covenant with staff. She stated that the responsibility for enforcing the covenant will be the neighborhood's and not the city's. She stated that the Association needs to be specific about what they want, because what you leave out of that restrictive covenant can be done in a B-3-B. She stated that it would be wise to discuss whatever problems you have because you may want something to be a part of the covenant. She stated that once this is rezoned to B-3-B the city is not a part of the private agreement.

Ray Racine questioned how this covenant would have to be incorporated.

Steve Smith stated it would be recorded against the land.

Mr. Racine questioned if he would be required to put shrubbery in front of the fence.

Steve Smith stated it is not a requirement.

Edith Kenna stated that is something that maybe should be discussed with Mr. Kelley again.

Janet Bradbury stated she would urge that the Neighborhood Association and a representative from Mr. Kelley and work out a reasonable agreement.

Steve Smith stated if they are able to work out an agreement if they would provide a copy to staff before the end of the week for their information.

There was no one present who wished to speak in favor of or in opposition to the proposed rezoning and vacation.

DECLARATION OF RESTRICTIVE COVENANTS

WHEREAS, James E. Kelley is the owner of Lots 8, 10, 12, 14, 16 and 18 in John M. E. Riedel's Addition to the City of Fort Wayne and has filed a petition with the Fort Wayne City Plan Commission to rezone this real estate from R-2 to B-3-B, which petition is pending in Case No. 252; and

WHEREAS, James E. Kelley has met with various owners of real estate along Pleasant Avenue between East State Boulevard and Forest Avenue, as well as with representatives of the Northside Neighborhood Association, Inc. and has agreed to enter into this Declaration of Restrictive Covenants to and for the benefit of the Northside Neighborhood Association, Inc. and the owners of real estate used for residential purposes along Pleasant Avenue between East State Boulevard and Forest Avenue in the City of Fort Wayne;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. James E. Kelley shall cause any portions of Lots 8, 10, 12, 14, 16 and 18 in John M. E. Riedel's Addition to the City of Fort Wayne used for vehicle storage or parking to be paved with a permanent surface, such as concrete or asphalt, prior to using that real estate or such portions thereof for vehicle storage or parking.

2. James E. Kelley shall install and maintain a first-class, 6-7 foot high, wood privacy fence along Pleasant Avenue from the north line of Lot 2 continuous to the south line of Lot 18 in John M. E. Riedel's Addition to the City of Fort Wayne, provided, however, James E. Kelley shall be allowed to install and maintain a wood gate at Riedel Place (or vacated Riedel Place), which gate shall be substantially similar to the remaining portion of the wood fence. The gate will remain locked when not in use.

3. No loudspeakers or high-intensity lighting, other than normal security type lighting, shall be installed or used upon Lots 8, 10, 12, 14, 16 and 18 in John M. E. Riedel's Addition to the City of Fort Wayne.

4. No motor homes shall be parked or stored upon Lots 8, 10, 12, 14, 16 and 18 in John M. E. Riedel's Addition to the City of Fort Wayne.

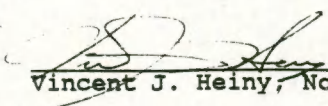
5. This Restrictive Covenant shall run with the land, shall be binding upon James E. Kelley, his successors and assigns, and shall be enforceable in court, including by way of injunctive relief, by the Northside Neighborhood Association, Inc. or by any owners of residential real estate along Pleasant Avenue from East State Boulevard to Forest Avenue in the City of Fort Wayne. This Covenant shall expire on January 1, 2025.


JAMES E. KELLEY

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, personally appeared James E. Kelley and acknowledged the execution of the above and foregoing this 27th day of February, 1987.

My Commission Expires:
June 23, 1988
Resident of:
Allen County, Indiana


Vincent J. Heiny, Notary Public

This instrument prepared by Vincent J. Heiny, Attorney at Law.

5466.vjh/sm

BILL NO. Z-87-02-27

REPORT OF THE COMMITTEE ON REGULATIONS

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) amending the City of Fort
Wayne Zoning Map No. N-14

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG
LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE)
(~~RESOLUTION~~) Do Pass

YES

NO

Janet G. Bradbury
JANET G. BRADBURY
CHAIRPERSON

Charles B. Redd
CHARLES B. REDD
VICE CHAIRMAN

Thomas C. Henry
THOMAS C. HENRY

Paul M. Burns
PAUL M. BURNS

Ben A. Eisbart
BEN A. EISBART

CONCURRED IN 5-26-87

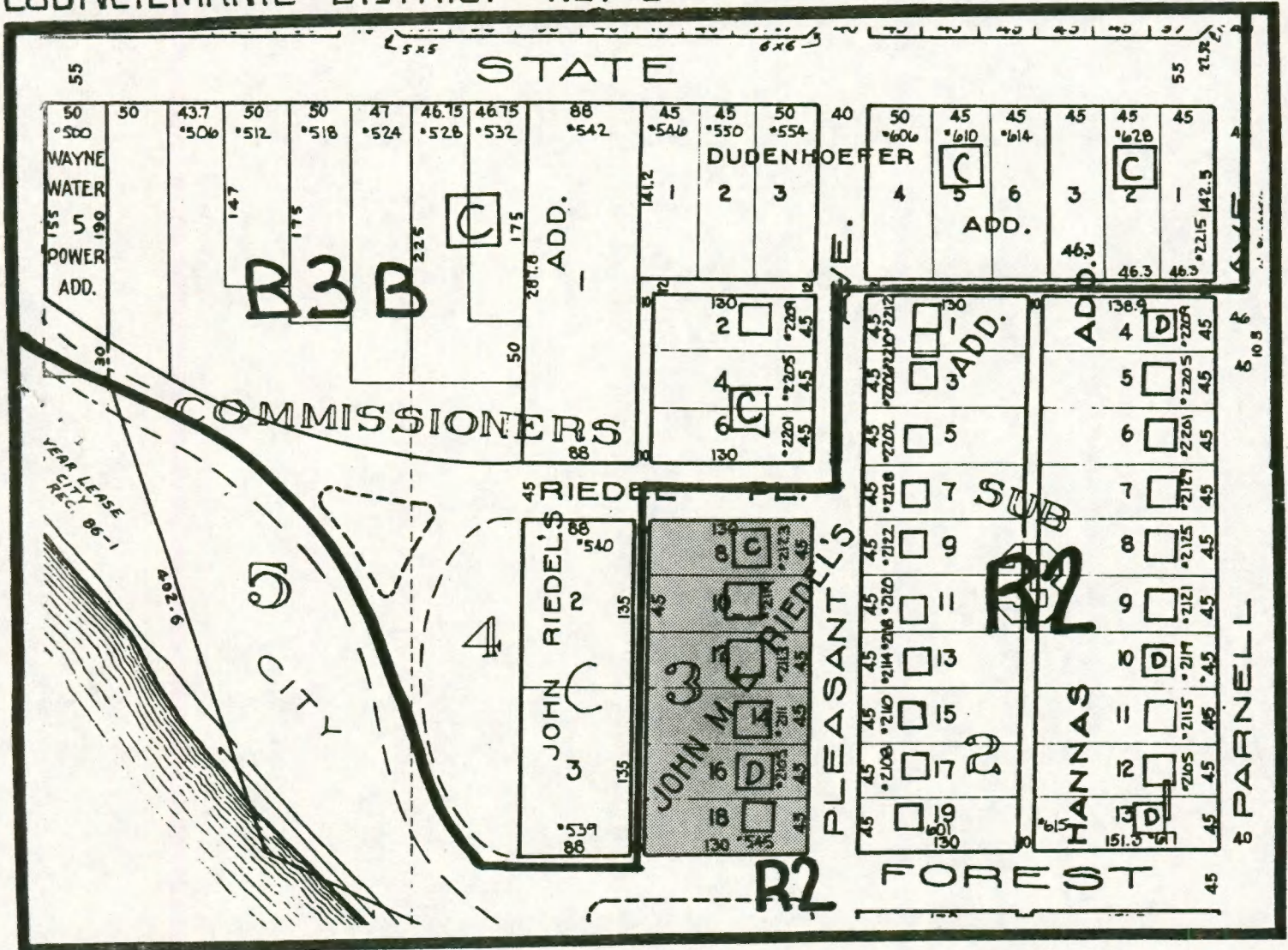
SANDRA E. KENNEDY
CITY CLERK

REZONING PETITION #252

A PETITION TO AMEND THE ZONING MAP BY RECLASSIFYING THE DESCRIBED PROPERTY FROM AN R-2 DISTRICT TO A B-3-B DISTRICT.

MAP NO. N-14

COUNCILMANIC DISTRICT NO. 3



ZONING:

R2 RESIDENTIAL DISTRICT
B3B GENERAL BUSINESS 'B'

LAND USE:

☐ SINGLE FAMILY
☒ DUPLEX
☒ COMMERCIAL

SCALE: 1" = 200'

DATE: 1-29-87

